



**CORRECTED
FISCAL MEMORANDUM**

HB 767 - SB 726

April 9, 2021

SUMMARY OF ORIGINAL BILL: Enacts the *Insurance Modernization Act* (the Act). Authorizes a reinsurance credit when the reinsurance is ceded to an assuming insurer who has its head office in, or is domiciled in, a reciprocal jurisdiction and is licensed in a reciprocal jurisdiction. Requires the assuming insurer have and maintain, on an on-going basis, a minimum capital and surplus, a minimum solvency or capital ratio, and agree in writing to the Commissioner of the Department of Commerce and Insurance (DCI) to consent to the laws and jurisdiction of this state.

Defines “reciprocal jurisdiction” as a jurisdiction that is either: (1) a non-United States (U.S) jurisdiction subject to a covered agreement to which the U.S. is a party; (2) a U.S. jurisdiction that meets requirements for accreditation under the National Association of Insurance Commissioners; or (3) a qualified jurisdiction, as determined by the Commissioner of DCI, that meets certain additional requirements, consistent with the terms and conditions of covered agreements.

Requires the Commissioner of DCI to timely create and publish a list of reciprocal jurisdictions and insurers that satisfy the provisions of the Act.

Deletes the *Tennessee Health Care Liability Reporting Act*, requiring every insuring entity or self-insurer that provides health care liability insurance to any facility or provider in this state to report each health care liability claim and incident identifier to the Commissioner of DCI by March 1 of each year.

Authorizes a captive insurance company, except for a risk retention group, to provide parametric insurance policies. Lowers the required unimpaired paid-in capital and surplus of a protected cell captive insurance company.

Removes the requirement that all domestic or foreign insurance companies doing business in this state to appoint the Commissioner of the DCI as the company’s true and lawful attorney for the purposes of service of process. Establishes that the Secretary of State (SOS), rather than the Commissioner of the DCI, will be deemed the true and lawful attorney if the insurance company does not appoint their own.

CORRECTED FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures - \$215,400/FY21-22/Division of Business Services
\$165,400/FY22-23 and Subsequent Years/
Division of Business Services

Increase State Revenue - \$11,200/FY21-22
\$7,200/FY22-23 and Subsequent Years

IMPACT TO COMMERCE OF ORIGINAL BILL:

Increase Business Expenditures - \$11,200/FY21-22
\$7,200/FY22-23 and Subsequent Years

SUMMARY OF AMENDMENT (006649): Deletes and rewrites provisions of the original bill such that the only substantive change is authorizing protected cell captive insurance companies to maintain a level of surplus of \$100,000, rather than \$100,000 at the core as long as each individual protected cell maintains a level no less than \$25,000.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

The Secretary of State has provided information regarding increased documentation for service of process appointments; given this information, the estimated fiscal impact of the original bill has been corrected.

Unchanged from the corrected fiscal note.

Assumptions for the bill as amended:

Assumptions relative to the Insurance Modernization Act:

- Based on a roster provided on the Department of Commerce and Insurance (DCI) website, 206 captive insurance companies are currently active in Tennessee.
- Authorizing a reinsurance credit as a captive insurance company to insurers in a reciprocal jurisdiction that meet all other qualifications under the Act, is estimated to increase the number of captive insurance companies by at least 10.
- According to the DCI website, the fees for a captive insurance company operating in this state are as follows: \$675 application fee; \$440 certificate of authority issuance fee; \$515 annual statement filing fee; \$400 change in business plan of operations fee; and \$7 certificate of compliance fee.
- A one-time increase in state revenue in FY21-22 for 10 captive insurance companies applying to operate in Tennessee of \$11,150 [10 companies x (\$675 application fee + \$440 certificate of authority fee)].

- Change of business plans are required to be submitted to the Commissioner in the case of any material change to a captive insurance company's originally submitted plan of operation.
- Half of the 10 captive insurance companies established in FY21-22 are estimated to file one change of business plan annually.
- A recurring increase in state revenue to the General Fund, in FY22-23 and subsequent years, for 10 captive insurance companies established in FY21-22 paying fees associated with annual operation in this state of \$7,220 $\{[(10 \text{ companies} \times (\$515 \text{ annual filing fee} + \$7 \text{ certificate of compliance fee})) + (5 \text{ companies} \times \$400 \text{ change of business plan})]\}$.
- The Commissioner can compile a list of reciprocal jurisdictions and insurers that satisfy the provisions of the Act within existing resources.

Assumptions relative to deleting the Tennessee Health Care Liability Reporting Act:

- Pursuant to Tenn. Code Ann. § 56-54-104, the Tennessee Health Care Liability Reporting Act does not apply to the state or those employed by the state.
- Pursuant to Tenn. Code Ann. § 56-54-108, any cost incurred by DCI to implement the Health Care Liability Reporting Act is required to be paid out of existing reserves of the DCI Division of Insurance.
- The Commissioner is required to submit an annual report summarizing the information submitted by health care liability insurance providers to the Speaker of the Senate and House of Representatives on or before November 1 of each year.
- Deleting the requirement of the Commissioner to summarize claim information and submit a report annually is not estimated to significantly decrease workload or staffing resources within DCI.

Assumptions relative to captive insurers and service of process:

- Pursuant to Tenn. Code Ann. § 56-13-105(a), a protected cell captive insurance company is required to possess and maintain a paid-in capital and surplus of \$250,000.
- The proposed legislation authorizes protected cell companies to maintain a level of \$100,000 at the core, as long as each individual protected cell maintains a level no less than \$25,000.
- The proposed flexibility is not estimated to significantly increase the number of protected cell company licensees.
- Establishing that the SOS, rather than the Commissioner of the DCI, will be deemed an insurance company's true and lawful attorney for the purposes of service of process, if the company does not appoint its own, will significantly increase the documents to be served annually under the Division of Business Services by approximately 5,600.
- According to the Department of Commerce and Insurance, there is currently one employee who administers the service of process documents as part of their job duties. There will not be a significant decrease in staffing requirements.
- According to the Secretary of State, the Division will require two additional Business Services Officers for a recurring increase in expenditures, beginning in FY21-22, of \$86,956 $[(\$31,500 \text{ salary} + \$11,978 \text{ benefits}) \times 2 \text{ positions}]$.

- The proposed legislation deletes the current authorization to charge a fee of \$15.00 to process a service of process under Tenn. Code Ann. § 56-2-504.
- The Division will be required to service an estimated 5,600 documents per year at \$14.00 per document for registered mail, envelopes, paper, and printing. A recurring increase in expenditures, beginning in FY21-22, of \$78,400 (5,600 x \$14.00).
- The Division will require a one-time increase in expenditures of \$50,000 in FY21-22 to update the summons program in order to maintain records of service.
- A total increase in state expenditures to the Division of Business Services estimated to be \$215,356 (\$86,956 + \$78,400 + \$50,000) in FY21-22.
- A total recurring increase in state expenditures to the Division of Business Services, beginning in FY22-23 and subsequent years, of \$165,356 (\$86,956 + \$78,400).

IMPACT TO COMMERCE WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

- The proposed legislation is estimated to increase the number of captive insurance companies operating in the state by 10.
- A one-time increase in business expenditures in FY21-22 for 10 captive insurance companies applying to operate in Tennessee of \$11,150 [10 companies x (\$675 application fee + \$440 certificate of authority fee)].
- A recurring increase in business expenditures, in FY22-23 and subsequent years, for 10 captive insurance companies established in FY21-22 paying fees associated with annual operation in this state of \$7,220 {[10 companies x (\$515 annual filing fee + \$7 certificate of compliance fee)] + (5 companies x \$400 change of business plan)}.
- Pursuant to Tenn. Code Ann. § 56-54-105, the Commissioner is authorized to require insuring entities, self-insurers, facilities, and providers to submit all claim data electronically.
- It is assumed that all claim data is submitted electronically; therefore, business expenditures could decrease for insuring entities, self-insurers, facilities, and providers no longer having to file claim data, but any decrease is estimated to be not significant.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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